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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 ST. PAUL FIRE AND MARINE  
10 INSURANCE COMPANY; and  
11 ST. PAUL MERCURY INSURANCE  
12 COMPANY,

13 Plaintiffs,

14 v.

15 HIGHLINE SCHOOL DISTRICT  
16 NO. 401; SCHOOLS INSURANCE  
17 ASSOCIATION OF WASHINGTON;  
18 and R.T.,

19 Defendants.

C17-1917 TSZ

MINUTE ORDER

20 The following Minute Order is made by direction of the Court, the Honorable  
21 Thomas S. Zilly, United States District Judge:

22 (1) The motion for reconsideration brought by defendant Schools Insurance  
23 Association of Washington (“SIAW”), docket no. 41, is DENIED. SIAW contends that it  
is not an “insurer” and that the ambiguity in the policy at issue should not have been  
construed against SIAW as the drafter. Even if true, SIAW would not be entitled to  
judgment as a matter of law as to the duty to defend under the General Liability insuring  
agreement, which provides coverage for amounts that Highline School District No. 401  
(“Highline”) becomes legally obligated to pay as damages “because of Bodily Injury . . .  
first arising out of an Occurrence during the Coverage Period.” If the Court did not rely  
on the principle of construing ambiguities against the drafter, the Court would resort to

1 extrinsic evidence concerning the parties' intent in an effort to determine whether the  
2 term "during the Coverage Period" modifies the word "Occurrence," as SIAW contends,  
3 or the phrase "Bodily Injury . . . first arising out of," as Highline suggests.<sup>1</sup> In connection  
4 with its motion for summary judgment, SIAW did not offer the requisite extrinsic  
5 evidence and, even if it had, the parties' intent involves the type of genuine dispute of  
6 material fact that precludes summary judgment, particularly given that "all justifiable  
7 inferences" had to be drawn in favor of Highline as the nonmoving party. See Anderson  
8 v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). SIAW disagrees with the Court's  
9 analysis that, to proceed on the underlying claim against Highline, the complainant (R.T.)  
must have discovered the injury or condition within the three years before her suit was  
commenced and that, if R.T. satisfies this prerequisite, she might be pursuing damages  
because of Bodily Injury "first arising" during the Coverage Period. The issue before the  
Court is not whether R.T. can prove that any Bodily Injury for which she seeks damages  
first arose during the Coverage Period; rather, on a motion for summary judgment as to  
the duty to defend, the question is whether the policy at issue "conceivably covers" the  
allegations of the liberally construed underlying complaint.

10 (2) SIAW's alternative motion, docket no. 41, for certification pursuant to  
11 28 U.S.C. § 1292(b) to pursue an appeal of the Court's Order entered September 4, 2018,  
12 docket no. 40, is DENIED. SIAW is reminded that such Order merely denied its motion  
13 for summary judgment. The Court did not grant summary judgment in favor of Highline  
or make a ruling that SIAW has a duty to defend Highline, and the parties may proceed to  
trial on the issue if they wish. In light of the procedural posture of the matter, the Court  
cannot make the requisite certification under § 1292(b) that an immediate appeal would  
materially advance the ultimate termination of the litigation.

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15 <sup>1</sup> SIAW argues that the Court failed to determine the "trigger" for coverage. The Court could not  
16 do so, however, because the policy language was ambiguous. SIAW accuses the Court of not  
17 considering the contract as a whole in finding that the policy language at issue is ambiguous. It  
18 uses as an example the phrasing of the Automobile Liability insuring agreement, which requires  
19 SIAW to pay amounts for which Highline becomes "legally obligated to pay as damages because  
20 of Bodily Injury or Property Damage . . . first arising out of an Accident during the Coverage  
21 Period and resulting from the ownership, maintenance or use of a Covered Automobile in the  
22 Coverage Territory." See Ex. K to Rosner Decl. (docket no. 28-3 at 118). This wording suffers  
23 from the same ambiguity as the language at issue in the General Liability insuring agreement,  
leading to the similar question of whether the term "during the Coverage Period" modifies the  
word "Accident" or the phrase "Bodily Injury or Property Damage . . . first arising out of."  
SIAW asserts that "[n]o one would argue that the auto liability coverage issued in 2009 applies  
to emotional distress resulting from a 1994 auto accident," SIAW's Mot. at 3 (docket no. 41), but  
it cites to no authority for this proposition, and its attempt to use similarly ambiguous language  
to disprove the existence of an ambiguity fails. Moreover, although SIAW contends that the  
jurisprudence concerning Washington insurance law does not support coverage for sexual abuse  
occurring before a policy issued, SIAW has identified no Washington case addressing the issue.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 11th day of October, 2018.

William M. McCool  
Clerk

s/Karen Dews  
Deputy Clerk